

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:08CR281
	)	
v.	)	
	)	
ENRIQUE CABALLERO,	)	ORDER
	)	
Defendant.	)	
	)	

This matter is before the court on the defendant's motion to vacate under 28 U.S.C. § 2255 and amended motion to vacate. Filing No. [145](#), Filing No. [155](#). Under Rule 4 of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court must perform an initial review of the defendant's § 2255 motion. *See Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 4(b), (2011 Ed.). The rules provide that unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to a violation of 21 U.S.C. § 846 for conspiracy to possess with intent to distribute methamphetamine and crack cocaine. The defendant was sentenced to the mandatory minimum sentence of 10 years. In his amended § 2255 motion, the defendant alleges that he received ineffective assistance of counsel in connection with setting up debriefs prior to sentencing, his guilty plea, and sentencing.

On initial review, the court finds that it does not plainly appear that the defendant is entitled to no relief, and that the government should be required to answer. On receipt

of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 8(a), (2011 Ed.).

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's amended § 2255 motion within 21 days of the date of this order. Filing No. [145](#), Filing No. [155](#).

DATED this 20<sup>th</sup> day of June, 2011.

BY THE COURT:

s/Joseph F. Bataillon

JOSEPH F. BATAILLON

Chief United States District Judge

---

\*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.